

The Chartered Surveyors' Institution

(Incorporated by Royal Charter),

12, GREAT GEORGE STREET, WESTMINSTER, S.W.1.

PATRON :

HIS MAJESTY KING GEORGE VI.

TRANSACTIONS

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SESSION 1943-44.



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COUNTY BRANCHES.

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(The names of those deceased are printed in italics.)

AFFILIATED SOCIETY :

The Chapter of South Africa Quantity Surveyors (within The Institute of South African Architects).

Secretary :

J. S. LEWIS, 84, Walter Wise's Building, Joubert Street, Johannesburg.

Transactions of The Chartered Surveyors' Institution

SESSION 1943-44.

AT THE ORDINARY GENERAL MEETING

Held at the Chartered Surveyors' Institution on Monday, 18th October, 1943.

Mr. W. C. FARNSWORTH (*President*) in the Chair.

NEW MEMBERS.

The following new members were received by the President prior to the meeting and signed the Register :—

Professional Associates :

COTTIS, RONALD JOSEPH	ROACH, DAVID JOHN
DIXON, FRANK	ROULEDGE, ERNEST WILLIAM
DODSWORTH, PHYLLIS (Miss)	RUSSELL, ERNEST
EARTHROWL, RUSSELL ARTHUR	SHAWE, PETER VERNON
GANDY, KENNETH	SHEDDEN, CHARLES BOULTON
GULLIFORD, JOHN HAROLD	SWORN, LESLIE THOMAS
PIKE, GEORGE EDWARD	VATCHER, ALBERT WILLIAM
REED, FREDERICK ARTHUR	WOOD, LESLIE ALFRED

PRIZE WINNERS : PROFESSIONAL EXAMINATIONS, 1943.

The prize winners in the Preliminary and Professional Examinations, 1943, were announced as follows :—

Penfold Gold Medal and Driver Prize : D'ALTON, MICHAEL MAURICE AUSTIN.

Penfold Silver Medal and Robert Irwin Barr Prize : CARMICHAEL, THOMAS.

Wainwright Prize, Institution Prize and John Gilchrist Prize : FOSTER, JOHN.

Galsworthy Prize and Crawter Prize : EARTHROWL, RUSSELL ARTHUR.

Special Prize : THOMAS, PHILIP PERCIVAL.

Quantities Prize : HOW, CHARLES WILLIAM.

Constructive & Working Drawings Prize : RUSSELL, ERNEST.

Hyman Marks Prize : HANNAH, DONALD CLARK.

Julian Rogers Prize : PARK, HUGH LIVINGSTONE.

An ADDRESS was given by SIR MALCOLM TRUSTRAM EVE, BT., M.C., T.D., K.C. (Associate), Chairman of the War Damage Commission, on the subject

"IS IT A COST OF WORKS OR A VALUE PAYMENT?"

The PRESIDENT, in extending a warm welcome to Sir Malcolm Trustram Eve, not as a stranger, but as an Associate of the Institution, referred to his distinguished career, both at the Bar and in His Majesty's Forces during the last war, and paid tribute to the remarkably fine achievement of Sir Malcolm in the creation from nothing of the War Damage Commission.

Sir MALCOLM TRUSTRAM EVE opened his address with a brief review of the task confronting the Commission, and stated that in addition to the heavy current work of examination and payment of claims the staff had had to inspect properties for the purpose of classifying them under the formula to find out whether they were, or were not, a total loss. In a period of nine months 2,460,000 hereditaments had been inspected on the spot, and 2,614,000 had been provisionally classified. In addition, the work of assessing the amounts of value payments had begun, and a very considerable amount of the work been done. This, he thought they would agree, was quite a lot of work to do in nine months, and he left them to decide whether, bearing in mind that the formula under which the Commission was now working for total loss became law only on 25th March, 1943, there had been much chance of the public being told the answer to the question "Is it a Cost of Works or a Value Payment?"

Sir Malcolm paid a tribute to the staff of the Commission—numbering 2,265 men and women of all grades—and, including in his remarks the members of the Valuation Department of the Inland Revenue who had helped, said that in his opinion there was no other body of war workers who had worked harder or done a better job. He was, he said, proud to be a working member of such a team. A time would come when they could say they had finished; but for a long time they would remain "The Few Who Owe so Much to so Many."

What had been done could not have been done without the advice and professional skill of Chartered Surveyors. The Institution—and in this connection he would especially mention the Acting Secretary—had always been ready to advise, co-operate, and, with its usual tact, to prod. The work of Geoffrey Vigers as a member of the Commission could not be rated too highly, and his death at the height of his powers was a serious loss. Eleven of the sixteen Deputy Commissioners were Fellows of the Institution, and the advice the Commission received from the Deputy Commissioners was so important that he could not imagine how they got on in the early days without it. Members of the Institution were members of the Valuation Staff of the Inland Revenue who had co-operated in the work of classification, and of the Commission's own Staff. And, lastly, Chartered Surveyors had all helped by the fair way in which they had presented their clients' claims to the Commission. "I refuse, and always have refused," added Sir Malcolm, "to look upon the Commission as a party to a case or to a dispute. We are not a purchaser trying to bid down a vendor; we are a tribunal trying to assess what is a fair answer, and you are professional advisers presenting a fair case to that tribunal."

Proceeding to the question posed by the title of his address, "Is it a Cost of Works or a Value Payment?" Sir Malcolm continued:

The Formula. In order to deal with the question, it is necessary to understand the formula in Section 7. I am speaking to-day almost entirely about developed hereditaments, hoping that undeveloped hereditaments are simpler and will follow. It is necessary to understand the formula for total loss. I do not propose, of course, to give a complete statement of what it means and what it says, but I have tried to pick out one or two points which appear from our correspondence to be worth noting.

In the first place, the formula requires a unit, and we have endeavoured to set out in our Practice Notes, Nos. 17 to 21, our general policy with regard to the unit. The general guiding rule is the unit of rating, but there are exceptions. Let me mention two principal ones. We cannot take a smaller unit than one physical building. Secondly, we have reserved the power to take a larger unit where an owner owns a number of properties contiguous to one another, on the basis of what would be reasonable and probable for a reasonable owner.

The second important point is that Section 7, which gives this formula, begins by saying that the whole of it is subject to four other sections of the Act, Sections 13 (cases where the damage is not to be made good), 14 (dealing with notices to treat), 15 (dealing with the cost of works payment where it will benefit another property), and 20 (dealing with the public interest). All those four sections govern the provisions of Section 7. My quotations are from the Consolidation Act of 1943, which is now the only War Damage Act which exists.

The formula both as to cost and as to the two valuations is now as at 31st March, 1939. I have been asked on several occasions to say something about 31st March, 1939. I have read with great interest the correspondence in your *Journal*, in the *Estates Gazette*, and in other professional papers, about the possibility of war at March, 1939. In the view of the Commission, this is a matter of valuation. But it is certainly not legal, I am advised, to value on the basis that war was certain, because it was not; the whole object of taking that date was to avoid that. As I see it, the question for you to answer is this: What would a purchaser and a vendor in fact have agreed to fix, sitting down on 31st March, 1939, and putting down the sort of things that would reasonably have been in mind at that date? I will remind you of one or two things.

The date was selected by an expert committee on which eminent professional gentlemen sat, including your President, and they reported on 3rd November, 1939. They were trying to recommend the best date which would give stable values and be reasonably fair to all claimants. Reading their report again the other day, I find they refer to "reflecting normal peace-time conditions" and not too far removed from the war period," and they say: "This date reasonably satisfied these conditions as regards the ruling prices realised for property placed on the market for sale."

Secondly, I find that there is quite a large body of evidence of actual market values round about that date. Our advisers have that evidence, and I have personally studied it to the best of my ability. The evidence, as a whole, seems, as one would expect, to point to the fact that the expert

committee was right. I suggest that it is not wise to value after the event, but that one should try to put oneself back to March, 1939. Of course, if any particular property can be *proved* to have had a higher or a lower market value than other properties in March, 1939, because of the possibility of war, then that higher or lower market value is the proper one to take.

Then we come to the cost factor, the first factor in the formula. The "works" required are works for exact reproduction. It should be particularly noted that the proviso in the cost of works section relating to valueless parts does not occur in the formula; an exact reproduction, including valueless parts, must be assumed. Again, reinstatement is notional only, and it is assumed to take place even if it is illegal to do it. One last point on the cost factor. The words used in this part of Section 7 are almost identical (apart from the omission of valueless parts) with the words used in Section 8 giving a claimant the right to a cost of works payment—"in the form in which it existed immediately before the occurrence of the damage." It is true that for the formula the levels of prices are as at March, 1939, whereas for the cost of works payment the levels are at the time of the actual expenditure, but the works are the same, and I think that the saying that what is sauce for the goose is sauce for the gander might be remembered here. Under the formula in Section 7 it pays a claimant to make the cost factor small, and under Section 8, for the cost of works basis, it pays for it to be big. I venture to suggest that there is a useful way of ironing out difficulties there. For example, it may be suggested that for the purpose of the formula it was unnecessary to include an architect's fees as part of the proper cost. That may or may not be so, but it will be reasonable, if someone urges that argument in order to get a cost of works payment, that he should not be paid an architect's fee when the cost of works payment comes along.

The value of the notionally reinstated hereditament is the first of the two valuations. That entitles a valuer to value "new for old" (that is, new materials for old materials) in so far as it relates to the damaged part of the hereditament. In other words, what has to be valued is a property with the undamaged parts as they were, and with the damaged parts notionally mended with new materials.

Lastly, there is the value as a site and with the damage not made good. Here I would refer you to the Commission's Practice Note No. 60, where we have endeavoured to set out how we administer that section; and all that I would say at the moment is that with regard to ruins or, indeed, valuable parts of properties that are left, it is not right that the Commission should claim a plus for those valuable buildings or parts, because the words are "value as a site." But equally we suggest that it is not right to have a hypothetical reduction from the site value where those buildings are in fact not in the way for redevelopment by a purchaser. Of course, where the purchaser would in fact reduce his price because he would be put to expenditure in getting rid of the ruins for the purpose of the development for which he is paying the price, then the net cost of removing them—and I emphasise the word "net"—is a fair deduction.

*Statutory
and other
Restrictions.*

I have been asked several times to say something about the restrictions subject to which sales are assumed to take place. The sale is of the fee simple in the open market with vacant possession. As it is a sale of the fee simple, restrictions in leases are

irrelevant. I am not dealing here, of course, with apportionments of value payments, which is, fortunately, a branch of the Act which concerns you alone, and not the Commission. Nor are the restrictions imposed by a trust deed relevant, unless the restriction is for the benefit of the public.

The Second Schedule of the Consolidation Act makes it clear that in applying the formula the restrictions to be regarded are those that are on the property "at the time immediately after the occurrence of the damage." I am advised that the obligation imposed under the Defence Regulations to obtain a building licence from the Ministry of Works is not a restriction to be regarded. On the other hand, although benefits are not expressly mentioned in the Act, I am advised that, as in the usual way of valuing, benefits running with the land are to be regarded.

Broadly, the position is that war damage payments will regard any statutory restriction actually in legal force *on the property* at the date of the bomb under a pre-March, 1941, Act; that is, under an Act passed before the original War Damage Act; but all further statutory restrictions, either by new legislation since that date or by action taken, after the bomb, under earlier legislation, are to be disregarded. So also is the possibility of future legislation. With regard to restrictive covenants other than statutory restrictions, the shortest rule is to say that covenants that run with the land on a fee simple sale are to be regarded, and the rest not.

*Rent
Restrictions
Acts : Effect on
Valuation.*

I am specially asked to deal with the Rent Act in relation to this formula. As a matter of legal construction it is full of complications, but I venture to suggest that in practice it is fairly simple. The only cases which ought to cause any difficulty under this formula are the borderline cases. In most of those there is likely to be very considerable damage to property. If you remember that in applying the formula restrictions are to be regarded immediately *after* the bomb, you will see that if, for example, immediately after the bomb all that exists is a blank site, or ruins, the Rent Act does not apply, because it is not a dwelling-house. On the other hand, if you were dealing with a case under this formula, where the damage was quite slight, I am advised that the Rent Act would still apply. I am told that the question in fact is, is it still a dwelling-house?

To sum up, for the great majority of cases, where the damage is large, you can safely ignore the Rent Act in the first valuation for the formula—I am not saying a word about value payments—and in the second of the two valuations, as a site with the damage not made good, you can safely ignore it in all cases.

*Special Classes
of Property.*

Then there are certain special classes of property. In the proviso to Section 7 (2), there is a reference to "hereditaments consisting of or comprising premises of a kind not normally the subject of sales in the open market." For dealing with that there is a document—S.R. & O., 1942, No. 2490. It directs valuations to be made as at the highest of these three values: (i) the value of the property to use, with or without alterations, for another purpose; (ii) the value of the property to redevelop; and (iii) the contractor's theory of valuation. I think you will agree that that is how you would normally value a property of that sort without any Act to help at all.

You will observe that the words are "premises of a kind not normally the

subject of sales in the open market." The emphasis must be on the class—"of a kind." A good example is a local authority house. A local authority house is a house, and houses are normally the subject of sale in the open market, though local authority houses are perhaps not normally so, and therefore I should not agree that local authority houses are within the proviso. You have to find the class first, and then the whole of the membership of that class comes within the proviso if that class is not normally sold in the open market, even if an odd one in it is occasionally sold in the open market.

Sports grounds are another example. We have decided that "not normally the subject of sales" means not normally the subject of sales to use for the same purpose for which they were being used before. Sports grounds, you will probably agree, are often sold for building, but the great majority of them are not sold to use again as sports grounds. We have decided that that is the fairest way to deal with this, and I do not think it is at all likely that claimants will quarrel with us, because broadly speaking it is an advantage to be within this proviso.

With regard to procedure, the Commission will not expect claimants to be put to the trouble of alleging whether their properties fall within this proviso or not in the first instance. We shall provisionally decide on total loss or otherwise, and provisionally form our own views on the application of the proviso. If, on the other hand, claimants object to the preliminary classification, and as part of their argument want to rely upon the proviso, we shall expect to be told of the reliance.

Lastly, there is the proviso to Rule 3 in this Statutory Rule and Order, to which I ought to draw your attention. It provides that where the Commission are satisfied that it is both probable and reasonable that the hereditament, or part of the hereditament, will continue to be used for the normal use, "all valuations within this Statutory Rule and Order shall be made on the basis that the hereditament is subject to a perpetual covenant restricting the use to the normal use." That is an advantageous proviso, applying when properties are not only going to be, but reasonably going to be, replaced on the same site. The broad effect of that proviso is that in the cases where it applies site value cancels out; and it is obviously for this class of property an advantage, because excess site values are ignored.

Special discussions are going on at this moment with regard to licensed premises. I think it right to mention them, because the classification of those properties may be delayed.

Charitable Properties.

Charitable properties are, of course, not within anything that I have said. On that subject, all I can say generally is that the great majority of properties which come within Section 69 as charitable properties will be dealt with exactly as if they were contributory properties. But special discussions are taking place with various groups of charities, and those of you advising charities should, I suggest, get into touch with the representative association concerned.

Clearance and Demolition by Local Authorities.

I should like to say a word on clearance and demolition by public authorities. The Commission is empowered to treat all such work, which purports to be done under proper authority for the purpose of clearing up after a bomb, as war damage. It will not do so if the claimant successfully pursues a remedy either for illegal action or

for compensation against somebody else. You have a choice. We will take it on if you like, but if you do not want that, go to somebody else. If this extra war damage affects the test under the formula, and makes it a case of total loss, then a total loss it must be, and a value payment will be the answer. On the other side of the picture, if it is to be a cost of works payment the Commission will pay for it. If it is war damage it must be treated as war damage, with the relevant advantages and disadvantages. Demolition to obtain steel and other materials which are wanted by the Supply Ministries is not war damage. The removal of railings is not war damage. Broadly speaking it comes to this, that such demolition or clearance as was in fact necessary, or was thought to be necessary by the competent authority, to remove dangerous and to demolish unsound parts or to clear up loose materials, is war damage. Where the claimant alleges that this is unfair, it will still be treated as war damage unless proved to the contrary by suitable action by the claimant against some other person.

Preliminary Classification.

I told you that we have gone a very long way in getting the preliminary classification under the formula ready. I hope that we shall be able to issue preliminary decisions to the public before the end of 1943 in the very great majority of cases. Obviously there will be a number of "sticky" cases, and I cannot say that all of them will come. I hope, however, that the great majority will be issued to the public before the end of this year. Secondly, I ask you to be kind enough to consider this point. In view of the huge numbers with which we have to deal, it is not possible to cope with the work except on the basis of a planned organisation. People are apt to say to me "Cannot you pick my case out? It will not take long." We cannot do it. We are definitely working on a planned organisation, partly geographical and partly based on sensible administration. We are at present busy preparing these documents wholesale, and we shall send them out in wholesale fashion when ready. If we let them go out singly, your answers will come back singly, and we have not the staff or the time available to answer them. As far as you can, therefore, and however stupid you may think it to be, I beg you to try to follow our procedure.

Form "Val. 1."

You have before you two documents with which you will be familiar in the future. I am going to deal first of all with cases where the provisional determination by the Commission is one of total loss, and the document relevant to that is called "Val. 1":

"It appears to the War Damage Commission that the war damage to the property described above involves 'total loss' as defined in Section 7 of the War Damage Act, 1943 (see extract on the back of this letter). The normal war damage payment in respect of a 'total loss' is a value payment.

"This letter is *not* a final determination of 'total loss.' It is sent to you merely as a preliminary decision of the Commission.

"If you agree with this preliminary decision, you need take no action on this letter and at a later date the Commission will send to you a final determination that the appropriate payment is a value payment and also a preliminary decision on the amount of the value payment. There will be a right of appeal in respect of the final determination.

"If, however, you feel that the war damage does not amount to 'total loss' under Section 7, the Commission is willing to consider any written arguments you may care to send to their Regional Office. It may be helpful to you to state that the question whether the war damage to your property does or does not amount to 'total loss' depends *solely* upon the statutory formula set out on the back of this letter. If, therefore, you wish to question this preliminary decision of the Commission, your written arguments should be directed towards showing that the cost of reinstating the property at prices current at 31st March, 1939, would not be greater than the excess of (a) the value which

the reinstated property would have had at that date over (b) the value of the property as a site with the damage not made good at that date.

"If you pass this letter to a professional adviser or other agent to answer, it will be assumed that you have appointed him to deal on your behalf with all questions arising in connection with your claim and further correspondence will be addressed to him. The Commission feels that it should tell you that, while you may consider it desirable to employ a professional adviser, it has no power to repay his fee."

I should like to underline one or two points about that document. First of all, it is *not* a final determination, and the right of appeal given by the statute does not arise on it but on a later document. We could have issued the final document straight away, but we took the view that it was unkind in war-time, and perhaps at any time, to issue a document which required notice of appeal to be sent in within 28 days or you would lose your remedies. Secondly, if there are cases where the decision should be altered, we give an opportunity for written argument and of putting the matter right without the expense to you or to us of an appeal. If the claimant has a professional adviser, I think it is not unreasonable for us to expect some help in the way of figures. We cannot make that request in cases where claimants do not seek professional advice, because I do not think that the figures would be much use to us, but, where there is a professional adviser, we ask him to help us by saying what he thinks the figures ought to be. If the claimant convinces us, we shall of course change our determination.

We have not imposed any time limit for the sending in of written arguments, but it is obviously desirable that such arguments should be sent in as soon as they conveniently can.

If the claimant does not convince us, or if he agrees with us and does not send in any written argument—and I think you will be surprised to find the very large numbers of cases in which there will be agreement—a further document will be sent, finally determining the total loss and provisionally giving the amount of the value payment. I would draw your particular attention to the fact that that document involves a decision within 28 days on the total loss; otherwise you cannot go further. There will, however, be a further period of time for written argument on the amount of the value payment, and then a final determination of the amount of the value payment, and again a right of appeal from that final determination in 28 days.

It is not correct to say that there is an appeal against total loss. The appeal is against the valuation figures, and I would draw your attention to the fact that such an appeal will be of no practical use unless it tips the scale against the unappealable cost figure. There are two figures which have to be compared, one cost and the other the difference between two values, in that formula. The difference between the two values is appealable to a referee, but the cost figure is not appealable to the referee. Let us assume that in the view of the Commission the cost figure is £200 higher than the difference between the two values. It is no use going to the referee and getting the latter figure up £100, because you will be no better off; you will merely have failed to clear the hurdle by the top rung instead of by the two top rungs.

I should like to add that, with minor exceptions, those officers of the Commission who have made the provisional determination between total loss and the opposite have made it in complete ignorance of the claim made by the claimant and the form issued by the Commission. That is done deliberately, in order that a fair decision may be given, because it is clear that a great

many claims are put in without a full knowledge of the Act. These decisions have been made regardless of whether the claimant has claimed total loss or not.

There is a very important repercussion in the form "Val. 1" on the Landlord and Tenant (War Damage) Acts. We have carefully considered our policy under those Acts. Decisions of the Commission affect rights under leases. Broadly speaking, we think that where it is a case of total loss, and there has been time for argument and a final document has been issued saying that it is a total loss, that is the time to issue the determination under the Landlord and Tenant Acts, so that conditional notices of retention will become disclaimers and the parties will know where they are. That is the policy which we intend to pursue with regard to total loss. The form Val. 1 does not do that; it is the later document which you will get which will do it.

Form
"Val. 3." I now come to the much more difficult case, where the provisional determination is not total loss. Here we are concerned with the document marked "Val. 3," and, to satisfy your curiosity, I may say that Val. 2 is merely an alternative form of Val. 1 for certain classes of property. In the very great majority of not total loss cases I have not the slightest doubt that the owner and his advisers know perfectly well that the damage is not a total loss. We are not, therefore, sending this document to every claimant. This is the document:

"1. The description of the war damage to this property notified to the War Damage Commission suggested that the damage involved 'total loss.' The test for 'total loss' as defined in the War Damage Act, 1943 (see extract on the back of this letter) does not however relate solely to the amount of the damage, and even complete destruction does not necessarily make a building a 'total loss' under the Act. It now appears to the Commission after inspection of the property that the war damage before (date of inspection) *does not* involve 'total loss.'

"2. This letter means that the Commission will in due course pay a claim for the reasonable cost of making good the war damage to this property (a cost of works payment) *after* the works have been carried out.

UNLESS

(a) the works have been carried out without first obtaining any necessary licences and consents—for example, building licence or planning consent. Your builder or professional adviser should be able to tell you what is required.

or (b) further war damage occurs or has occurred since the date mentioned in Para. 1.—If so, please treat this letter as cancelled and notify the further damage on Form C.1 if you have not already done so—

or (c) any person who has notified the Commission of an interest in this property sends to the Regional Office, *before* works of making good are carried out, written arguments to show that the damage involves 'total loss' (see Section 7 on the back). If you wish to send in such arguments, please do so as soon as possible, but it is unlikely to be to your advantage to do so unless you no longer have an interest in the property or wish that the damage should never be made good.

"3. The Commission can only pay a cost of works payment if the damage is in fact made good. If it becomes clear at any time or from any cause (including any planning or other statutory restriction) that all or some of the works to make good the war damage to this property will never be carried out, the Commission has power to make a value payment instead of a cost of works payment.

"4. This letter is *not* a formal 'determination' by the Commission under the War Damage Act so as to bring into force the provisions of the Act as to appeal or under the Landlord and Tenant (War Damage) Acts. Such determinations where necessary will be issued later.

"5. If you have already disposed of your interest in the property (for example by sale, surrender, disclaimer) you should inform the Regional Office of the Commission, giving the date of the transaction, so that the Commission may consider whether you still have any right to a war damage payment. If in future you dispose of your interest in a property which is not a 'total loss' you may deprive yourself of any right to a war damage payment. You should take proper advice before acting, though the Commission has no power to repay you any fees which you may incur."

Val. 3 looks fairly simple, but if you want a nice bit of work, try drafting that letter! There are so many "if's" and "but's." In the first place, we cannot ever say to anybody, "You are entitled to a cost of works payment," because the works may never be done. That is the first simple point. With a value payment, we can say, "You are entitled to a value payment," but we cannot do that here. Our object was to produce a document of real use to claimants, and which at the same time was not a formal determination, in cases where the claimant may wish to argue to the contrary of the letter. Since it gives the expectation of a cost of works payment I hope that this class will be very small. It ought to be only a few of those falling within paragraph 5 of the letter; that is, those who no longer have an interest in the property.

We are going to send that document to every single person who has notified war damage and has received from the Commission a "total loss" claim form, a C.3, for example, and where we now wish to make it clear that it is not "total loss" any longer. I hope that most of them will be pleased to receive it. It will be sent to every proprietary interest which has notified the damage to that property.

We are not sending a document of our own volition for any other property which is not a total loss, but we shall be prepared in such cases to send a similar letter (called Val. 4) to anyone who asks us for it. Now, that may be a dangerous statement. First of all, I would remind you that every one of those persons will have received a cost of works claim form, or at any rate one of the proprietors of the property will have done so. Of course, a C.2 or other similar document is in no sense a determination by the Commission, and there may therefore be a number of cases where claimants will be in genuine doubt and wish, for some good reason, to know definitely. In those cases, claimants can ask for a determination, and will receive a letter similar to Val. 3. But I cannot emphasise too strongly that if people ask unreasonably answers will not be forthcoming for many, many months, to the prejudice of the comparatively few who really ought to know and to know now. I therefore ask you to limit requests for this information to really essential cases. In no case can the Commission undertake to give answers blindly for a large estate.

I have been advised that this letter is a sufficient authority to those who are content to receive a cost of works payment and who are both legally able to carry out the works and in fact do so. Paragraph 4 says that it is not a final determination. There may be people who wish to urge that their property is a total loss, in which case they will have an opportunity for submitting written arguments, as I have explained, for a value payment. It is obviously very urgent that these cases should be brought to our attention as early as possible.

There may be cases where a formal determination is necessary for the purpose of the Landlord and Tenant (War Damage) Acts. We have had to consider our policy with regard to the powers under those Acts, and we have taken the view that in not-total-loss cases the policy should be the opposite of that in total loss cases, and that the conditional notices of retention should remain conditional until the various risks either of fresh bombing or of conversion into value payment are over. The possibility of further bombing and the possibility of converting the payment into a value payment are

obvious examples of where complications could arise. If, however, all the proprietors in a property agree in writing to ask for a determination they can have it; but, having studied these rather complicated Sections, I would urge the need for caution. The determination cannot be reviewed once we have issued it. It is a decision enforceable in the courts. A tenant may find himself with a binding lease, an obligation to repair, and only a share of a value payment to do it with. We therefore think that the best thing to do is to keep the conditional notices of retention conditional when the property is not a total loss.

It would have been very simple to say "We have now told everybody who is a total loss; everybody else is not." Unfortunately, we cannot do that. In a vast organisation of this kind it would be dangerous to say it. Some cases are not finished, and fresh bombing is happening every day. The best thing that we can do, therefore, is to tell all those who obviously have to know, and invite the others to ask if they are in doubt; but this objective, as I have already pointed out, will be defeated if too many ask. We shall do our best to adopt any further suggestions which are administratively practicable, but to deal with 2,750,000 properties with a staff of just over 2,300 means a huge job, and complicated documents such as Val. 3 ought not to be sent to every person who has lost a few tiles.

"Public
Interest"
Direction:
Housing.

The "public interest" section, Section 20, provides that the Commission can be given directions from the Treasury on certain matters of public interest. When such a direction is received it is mandatory on the Commission to exercise any powers which they have to see that that public interest prevails. You can rely, I know, on the Treasury and on my fellow-Commissioners and myself to do everything possible to see that directions are not received which produce obvious injustices, and in my opinion they certainly have not done so up to now. The Commission has just received a new public interest direction of importance in relation to housing.*

The formula under Section 7 was intended to avoid a total loss in cases where the market value of the building, excluding the site, was as great as the cost of mending the war damage, except that where the building stood on an under-developed site the excess value of the site over that properly attributable to the building on it was a debit from the market value. In other words, it was particularly intended to secure that good, modern, well-sited buildings were not designated as total loss. I am satisfied that the strict application of the formula would produce that result in the very great majority of cases, and our experience of provisional classification has confirmed that view. But this Treasury direction empowers the Commission, in the public interest, to make a cost of works payment for certain classes of houses where the formula for a small number of houses in those classes might produce total loss answers.

First of all, what is a house? For the purpose of this direction, it has a very wide definition. In addition to ordinary dwelling-houses, it includes blocks of flats, tenements, and any building where no more than the ground floor and basement are used for purposes other than living accommodation, so that it includes all buildings with shops or business premises on the ground

* The exact wording of the Direction has now been published, and will appear in the next issue of the *Journal*.

floor and nothing but dwelling accommodation above. Perhaps I should add that the Commission do not propose to count shacks as houses!

The effect of this new direction is that all houses erected after 31st March, 1914—that is, not more than 25 years old in March, 1939—and any houses erected earlier than 1914 which, in the opinion of the Commission, were immediately before the occurrence of the damage structurally not less sound than when they were erected, and in design, layout and amenities reasonably similar to post-1914 houses of the same type—may be the subject of a cost of works payment by the Commission, whatever the extent of the war damage. Secondly, the Commission is in effect authorised to ignore excess site values in the case of other reasonably decent houses except where the value of the site for re-development would exceed three-quarters of the market value of the house plus the site. In other words, small excesses of site value for purposes other than housing can be ignored in those cases to produce the greater likelihood of a cost of works answer, but where the excess value is three-quarters or more of the total value of the house and the site, the strict formula must be applied.

Let me repeat the effect of it. On houses which were not more than 25 years old in 1939, and on all houses older than that of equivalent soundness, design and layout to the general post-1914 standard, a cost of works payment can be made whatever the damage; and certain other houses have the advantage of avoiding the drawback under the statutory formula of excess site value for redevelopment.

There is, however, as there should be, one very important exception. It would be wrong to make a cost of works payment in those cases where the owner of a proprietary interest would suffer injustice, and the Commission is not to apply this direction where “in the opinion of the Commission the exercise of such powers in any particular case would involve injustice to any person interested in the question of the kind of payment.” There seem to us to be two obvious classes of such persons. There is first of all the person who has disclaimed his lease on the faith of receiving a value payment because the property was a total loss, and secondly there is the person who has sold his property on similar faith. If a cost of works payment were made, neither of those persons would, unless their contract had been very cleverly drawn, receive any war damage payment. In these cases, therefore, the property will be carefully tested under the formula, and, if the formula produces a total loss answer, the Commission will reverse its preliminary decision and determine a total loss and a value payment. It is in regard to those cases in particular that I would draw attention to paragraphs 2 (c) and 5 in Val. 3.

I would emphasise also that the benefit of this direction which I have quoted to you has in fact been given in *all* those cases where we are issuing a preliminary classification, and therefore it is for the claimant to point out to us the injustice referred to in that direction. I think you will agree that we cannot know that to start with. I have, however, given that promise—not that it is necessary, because the direction covers it—but if there is any injustice we expect to be told, and we will then review the case and put it through the formula and find out whether under the formula it is or is not a total loss. Where the formula does not produce a total loss the Commission, even if it wished to do so, has no power to do anything to help; it cannot help a disclaimed lessee or a vendor when the property is not a total loss

under the formula. Even if we were to alter it to a value payment, the value payment would go to the landlord or to the purchaser, and would not help the disclaimed lessee or the vendor.

I have heard it argued that the change in the formula brought about by the Amending Act of 1943 has altered the result under the formula. This may be so, although I think that the case is not common; but whether it is true or not I am certain that no-one here to-day can say that under the original formula a case was a *certain* total loss whereas it is now not a total loss. I doubt very much indeed whether anybody in this room is prepared to say that he has in any case in those circumstances advised a client to disclaim or sell.

Apparently it is necessary to give this warning: the Commission has not among its many powers any power to correct a foolish sale contract or a foolish disclaimer. It is very common for us to receive letters asking us to vary sale contracts or to vary leases, but, thank heaven, we have not yet been given that power!

There may, of course, be other cases of prejudice which will be considered on their merits as they arise, but, broadly speaking, I am sure that the vast majority of claimants will be delighted to hear of this power which has been given to the Commission. It is far better to have a piece of paper such as Val. 3, to say that the property is not a total loss and will in all probability attract a cost of works payment, than to have another piece of paper saying that the property is a total loss, with the possibility that a condition may be attached to the receipt of the value payment that the value payment must be used to build a building. I refer to Section 20 (3) (a).

*Sales of War
Damaged
Properties.*

That brings me to say a few words about sales of property.

In my view one of the things which your profession must originate from now on is the proper method of selling and the

proper amount at which to sell war damaged properties which are in receipt of Val. 3. The purchaser will buy with the benefit of that piece of paper, and with the thought that he will receive a cost of works payment at the right time, or, at the worst, if planning or some other reason forces it, he will receive a value payment. I want to emphasise that. If, after the receipt of Val. 3, the payment is converted into a value payment, either in the public interest under Section 20, or by reason of a notice to treat under Section 14, or, if the war damage is not made good, under Section 13, that "converted value payment" (which is the phrase we use in the office as a matter of convenience) goes in all cases to the owner at the time of the conversion, and not to the owner at the time of the bomb. Such a purchaser, therefore, ought always to buy, and, what is more important, the vendor ought always to sell, at a price not less than the undamaged 1939 market value. At the best, the purchaser will receive the full cost of restoring his property, and at the worst he will receive from us the full difference between the market value of the property at March, 1939, and the value of the property in its damaged condition at the same date, and in either case he will have the site.

The position of someone who receives Val. 1, the total loss form, is, of course, entirely different. We now call that an "original value payment." In that case the value payment will be paid to the owner at the time of the bomb, and in those cases it seems to me to be wise to buy and sell at the

damaged value only, unless you obtain the consent of the Commission to an assignment.

I will try to sum up the position. I think that any person who still has an interest in his property at the date when he receives Val. 3 would always be foolish to ask the Commission to reconsider its decision and determine a total loss. He will either wish to retain his interest or wish to get rid of it. If he retains his interest, the prospective right to a cost of work payment, or at worst a value payment, is presumably better than a right to a value payment. If, however, he wishes to sell, it is equally clear that he can sell for a better price with Val. 3 than with Val. 1, or at any rate at no worse a price. I am hopeful, therefore, that the only people who may be worried by the receipt of Val. 3 are those who have disposed of their interest in the property before they get that form; and I have promised those people that if they will tell us of this their cases shall be reviewed and put through the formula strictly and, if the result is total loss, the decision shall be reversed.

*Cases where
damage is not
made good.*

I want to say a word or two about Section 13, the section which deals with the case where the damage is not in fact made good. This is an important section, because it provides the power of changing to a converted value payment notwithstanding any previous determination, so that it is not too late in proper cases, after receiving Val. 3, to get it turned into a value payment under Section 13. I fully realise that there will be a large number of cases where, notwithstanding the power of the Commission to make a cost of works payment, the damage will not be made good, or the property will be redeveloped for a different type of building. As and when that position becomes clear in any particular case the Commission will be prepared to act under this section; but, as I have already said, the value payment will go to the owner at that time.

We do not, however, propose to rush into the use of this section before it is necessary. If all the proprietors agree that the property should be redeveloped by a different type of building, or if it is agreed that the property shall remain an open space, or the like, applications can be made, and will be dealt with as soon as we can deal with them. The Commission, however, is not prepared at the moment to accede to applications which merely state that the owner is not interested in the building, has bought another property, and does not care tuppence what happens. It may be that that building ought to be rebuilt by somebody else, and it seems to me quite easy for that claimant, as I have already explained, with the advantage of the possession of Val. 3, to sell the property on better, or at least on as good, terms as if he had a value payment declared. I may be wrong about this, and only experience can show; but I think it is right to say that at the moment, and until we know more, the Commission is not prepared to convert into a value payment under Section 13 without some knowledge of what will be done to the property.

After a number of questions asked by members had been answered by SIR MALCOLM, a vote of thanks to him was proposed by Mr. HUMPHREY RYDE (Honorary Secretary) and seconded by Mr. G. A. COOMBE (Member of Council). The vote of thanks was carried with acclamation, and was briefly acknowledged by Sir Malcolm. The meeting then concluded.

(It is hoped to publish some of the questions and answers in the next issue of the Journal.)